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Supreme Court of the United States

TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 98 PENSION PLAN,
Petitioners,

v.

AETNA CASUALTY & SURETY COMPANY,
Respondent.

v.

LAURANCE E. BACCINI

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the failure of the trial court and the Third Circuit Court of Appeals to allow Petitioners to amend their Complaint to more accurately plead a viable cause of action constituted such an extreme departure from the accepted course of judicial proceedings that this Court must exercise its function of error correction in federal litigation where (a) the Petitioners asserted viable claims against the Respondent not barred by a statute of limitations, (b) the trial court and Court of Appeals completely ignored the existence of these viable claims, and (c) the trial court and Court of Appeals denied the Petitioners the right to amend their Complaint without explanation or comment.

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PETITION FOR WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS

Petitioners, Trustees of the International Brotherhood of Electrical Workers Local 98 Pension Plan, pray that this Court issue its Writ of Certiorari to review the decision of the Third Circuit Court of Appeals rendered June 13, 2000.

OPINIONS BELOW

The Opinion of the Third Circuit Court of Appeals was filed on June 13, 2000 and is unreported. The Opinion is attached here in the *Appendix ("App.")* at 1a-10a.

JURISDICTION

The Third Circuit Court of Appeals rendered its decision on June 13, 2000. Pursuant to Supreme Court Rule 13.1, Petitioner timely files this Petition on September 11, 2000, within ninety days after June 13, 2000.

CONSTITUTIONAL PROVISIONS INVOLVED

This case does not involve a constitutional issue.

STATEMENT OF THE CASE

A. Factual Background

The Trustees' claims against Aetna arise from Aetna's repeated unconscionable failures to timely and properly respond to a lawsuit brought against the Trustees' predecessors (the "former Trustees") by the Secretary of the Department of Labor (the "DOL"). In that action (the "DOL Action"), the DOL sought damages from the former Trustees (among others) for alleged breaches of their fiduciary duties in connection with a mortgage held by the I.B.E.W. Local 98 Pension Fund (the "Fund").

The DOL instituted suit on October 14, 1988. *App. at 3a.* At the time, the Fund held a Pension and Welfare Fund Fiduciary Responsibility Insurance Policy with Aetna (the "Policy"). *App. at 14.* Pursuant to the terms of the Policy, Aetna had a contractual obligation to competently defend and indemnify the former Trustees, up to the $5 million policy limit. *App. at 15a., n.1.*

At the time the DOL instituted suit, the Fund had already placed Aetna on notice of the DOL's possible claim against it. Nevertheless, Aetna did not even acknowledge notice of the suit for over two months. *App. at 15.* During this delay, the former Trustees had to undertake their own defense. The former Trustees also had to formulate the defense strategy during this crucial period. *Id.*

When Aetna finally acknowledged receipt of notice of the DOL Action, it did so under a draconian reservation of rights. While Aetna "agreed" to provide the former Trustees with a defense, it did so only for "the present time." Aetna went so far as to "strongly suggest" that the former Trustees continue with their own defense, as Aetna could disclaim coverage at any time. Aetna wrote:

> We have now completed our initial review of the documentation concerning your demand for coverage. While at the present time we have decided that we will provide you a defense, we are fully reserving

> our rights to disclaim coverage should it appear that any of the exclusions in the policy apply to the circumstances in this case....
>
> Because of the potential for an ultimate disclaimer of coverage, *we strongly suggest that you maintain your [own counsel's] defense in the defense of this matter.*

App. at 3a. (emphasis added). This "suggestion" forced the former Trustees to continue defending themselves at their own expense — knowing that Aetna could disclaim coverage at any time.

As a result of Aetna's threat to disclaim coverage at any time, the Fund was forced to expend hundreds of thousands of dollars to provide an appropriate defense for the former Trustees, through its own counsel.

All told, the former Trustees spent eight years defending the DOL Action. The DOL finally agreed to settle the claim for $140,000, a fraction of its original $1.7 million demand. *App. at 4a., n.3.* No liability attached to the former Trustees. Aetna, capitalizing on the success of the former Trustees' counsel, paid the settlement sum. *App. at 4a.*

Over 7 years elapsed from the time Aetna made its "initial" coverage determination ("suggesting" that the former Trustees maintain their own counsel) through the date of settlement. Aetna did *nothing* during this time to further investigate, and resolve, the coverage issue. This failure forced the Trustees to pay for their own defense — a cost Aetna had a contractual obligation to assume.

B. The Abuse of Discretion

The Trustees filed their Complaint and Jury Demand against Aetna in the United States District Court, Eastern District of Pennsylvania, on December 5, 1997. *App. at 2a.* The Complaint contained claims for breach of contract (Count I), *quantum meruit* (Count II), and bad faith pursuant to Pennsylvania's insurance bad faith statute, 42 Pa.C.A §8371 (Count III). *App. at 2a., n.1.* Aetna filed an Answer on January 16, 1998, generally denying the Trustees' claims.

Aetna filed a motion to dismiss the Complaint pursuant to F.R.Civ.P. 12(c) on March 31, 1998. *App. at 13a.* By Order dated March 5, 1999, the trial court granted Aetna's motion. *App. at 21a.*

The trial court determined that the Trustees' claims had arisen by a date certain, and that the statute of limitations on the claims had run before the Trustees instituted suit. *App. at 20a.* In rendering the decision, the trial court failed to recognize the Trustees' contentions that Aetna had engaged in separate, independent wrongful acts within the statute of limitations period. *App. at 19a. — 20a.* Specifically, the trial court failed to address the Trustees' argument that Aetna had a duty to make a final determination on its reservation of rights — a claim not barred by the statute of limitations. The trial court further ignored the Trustees request for leave to file an amended Complaint, which could have more fully spelled out the claim and address the trial court's concerns.

The Third Circuit Court of Appeals compounded the problem by making the same mistake on appeal. In its June 13, 2000 opinion, the Third Circuit failed to address Aetna's duty to make a coverage determination. Like the trial court, the Third Circuit simply stated that the statute of limitations applied, which ended the case. Again, the opportunity for the Trustees to amend their complaint was ignored.

REASONS FOR GRANTING THE WRIT

In our judicial system, there is no more fundamental error than elevating form over substance as a means of denying a party access to the courts. That is what has happened in this case. The trial court dismissed the Trustees' claims, and the court of appeals affirmed, simply because a viable cause of action (i.e., Aetna's utter failure to investigate its reservation of rights and issue a final coverage determination during the Trustees' seven-year litigation with the DOL) was not clearly articulated in the Complaint. Yet, instead of adhering to the letter and spirit of notice pleading or allowing the Trustees to cure the alleged defect and proceed, the courts below refused

to address — or even acknowledge — the merits of the Trustees' claims. Such a failure is antithetical to the very notion of the grant of discretion to the lower courts. This Court should grant Petitioners' writ and redress this abuse of discretion and fundamental court error.

I. THE TRIAL COURT AND COURT OF APPEALS ABUSED THEIR DISCRETION AND DEPARTED FROM ESTABLISHED NORMS IN DISMISSING THE TRUSTEES' COMPLAINT AND REFUSING TO ALLOW THEM TO AMEND THEIR COMPLAINT

Dismissal of the Trustees' claims, without an opportunity to amend the Complaint, was a blatant abuse of discretion by the lower courts. The Complaint, and the logical inferences that flow from it, plainly reveal that the Trustees filed a timely claim on at least some of the breaches alleged against Aetna (such as Aetna's failure to diligently investigate its reservation of rights and provide a "final" coverage determination). The lower courts failed to even acknowledge the Trustees' arguments in this regard, however. They relied on the Complaint, as it stood, to render judgment on the pleadings for Aetna. Their failure to even acknowledge the Trustees' claims, and concomitant failure to allow the Trustees to amend the Complaint, requires this Court to intervene in its supervisory capacity to ensure the even-handed application of justice.

Dismissal of a complaint pursuant to F.R.Civ.P. 12(c) is disfavored. *Schrob v. Catterson,* 948 F.2d 1402, 1405 (3d Cir. 1991). Courts should utilize the procedure only in those exceptional instances where, on the bare face of the pleadings, a party is patently incapable of succeeding on his claims. *Id.* The Court must refrain from granting a dismissal unless no relief could be granted under any set of facts which the non-moving party could prove. *Hishon v. King & Spaulding,* 467 U.S. 69, 73 (1984). Thus, before granting such a motion, it must appear to the Court "*to a certainty* that no relief could be granted under any set of facts which would be proved." *Asplundh Tree Expert Co. v. Pacific Employers Insurance Co.,* No. 90-6976, 1991 U.S. Dist. LEXIS 10465, *7 (E.D. Pa. July 19,

1991)(emphasis added); *Travelers Indemnity Co. v. Stedman*, 895 F.Supp. 742, 745 (E.D.Pa. 1995).

"Judgment pursuant to Rule 12(c) will only be granted if it is clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. In essence, this Court may not grant [a] motion for judgment on the pleadings unless it appears beyond doubt that the [non-moving] party can prove no set of facts in support of its [claim] which would entitle it to the relief demanded." *Travelers, supra* at 745-46 (citing *Jablonski v. Pan American Guaranty Life Insurance Co.*, 863 F.2d 289 (3d Cir. 1988)); *see also Regalbuto v. Philadelphia*, 937 F.Supp. 374 (E.D. Pa. 1995).

Moreover, dismissal of a claim is strongly disfavored where amendment of the pleadings would cure any alleged defect and allow the plaintiff to proceed on its claim. *Conley v. Gibson*, 355 U.S. 41 (1957); *Urrutia v. Harrisburg County Police Dept.*, 91 F.3d 451 (3d Cir. 1996); *Centifanti v. Nix*, 865 F.2d 1422 (3d Cir. 1989). Pursuant to Fed.R.Civ.P. 15(a), leave to amend "shall be freely given when justice so requires."

> The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

Conley, 355 U.S. at 48. *See* James W. Moore, *Federal Practice* ¶15.10 (1983).

In rendering judgment on the pleadings for Aetna, the trial court did not simply disagree with the Trustees' position. Instead, it ignored these basic legal principles and utterly failed to address the Trustees' arguments concerning alternative, and viable, causes of action against Aetna. The courts below, in an apparent desire to dispose of the case quickly, summarily tied all improper acts by Aetna to its original refusal to honor its contractual obligations. They failed to address, much less recognize, the Trustees' argument that, by

necessity, a failure to investigate the basis for a reservation of rights could not have arisen at the time Aetna originally reserved its rights. The very nature of the claim concerns Aetna's actions *following* the initial determination, not the determination itself.

Had the lower courts not taken these missteps, they would have recognized the continuing validity of the Trustees' claims. Instead, the courts ignored the argument, which is a clear abuse of discretion mandating this court's intervention under its supervisory powers.

Simply put, the Trustees are not required to allege — and prove — all of the relevant facts at the pleading stage. The Federal Rules of Civil Procedure require only that the Complaint contain a short statement of the claim, sufficient to give notice to the defendant of the basis for the action. F.R.Civ.P. 8(a). *See also* 5A C. Wright and A. Miller, *Federal Practice and Procedure*, § 1371 (2d. ed. 1990), at 544 (under simplified pleading practice of Federal Rules, "the pleadings rarely provide a sufficient basis for judgment on the merits"). This the Trustees have done. The Trustees' claims are legally cognizable and the courts below abused their discretion by dismissing the Complaint, instead of allowing the Trustees to amend the Complaint to more fully articulate the viable causes of action against Aetna.

CONCLUSION

This Court should grant the petition for certiorari, reverse the decision of the Third Circuit Court of Appeals, and remand the case for further proceedings.

Respectfully Submitted,

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